<u>REMARKS</u>

STATUS OF CLAIMS

Claims 1-35 remain pending in this application. Claims 1-35 stand rejected.

CLAIM REJECTIONS – 35 U.S.C. § 112, SECOND PARAGRAPH

The Office Action rejected Claims 2, 8, 14-16, 18, 24 and 30-35 under 35 U.S.C. §112, second paragraph. The Office Action asserted that the word "likely" contained in each of these claims was indefinite for being a relative term. However, the fact that a term is relative does not automatically cause that term to be indefinite. In *Verve, L.L.C. v. Crane Cams, Inc.*, 311 F.3d 116, 65 USPQ2d 1051 (Fed. Cir. 2002), the Court of Appeals for the Federal Circuit (CAFC) held that the word "substantially" was not rendered indefinite even though that term was relative and was not further defined in the specification. There is no reason for the word "likely" to be treated differently than the CAFC treated the word "substantially." A person of ordinary skill in the art would understand the word "likely" to mean "probable" or "more likely than not."

For at least the above reasons, Applicant respectfully requests that the rejection of Claims 2, 8, 14-16, 18, 24 and 30-35 under 35 U.S.C. §112, second paragraph be withdrawn.

CLAIM REJECTIONS – 35 U.S.C. § 103

The Office Action rejected Claims 1-35 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,182,086 to Lomet in view of U.S. Patent No. 6,493,837 to Pang. Applicant traverses this rejection.

Claim 1 recites, in part, a "last buffer index value" that "provides information that identifies a last data buffer that was last used for buffering data." Claim 1 also recites, "selecting a data buffer that is associated with said buffer management structure based on said last buffer index value."

The Office Action admits that Lomet fails to teach or suggest these features. The Office Action alleges that Pang discloses the "last buffer index value" in the form of offset variable 206. Pang discloses that an event-tracing program 230 determines a buffer-internal location at which to start writing a log entry by examining a current offset value represented by offset variable 206. This takes place at step 308 (col. 6, lines 27-30). However, although offset variable 206 is used to determine where to start writing within a particular log buffer, Pang does not teach or suggest that offset variable 206 is used to select the particular log buffer itself from among a set of buffers. Indeed, the selection of the log buffer 204 from among the set 221 of buffers takes place earlier, at step 304 (col. 5, lines 57-62), and has nothing to do with offset variable 206.

Therefore, offset variable 206 is not a "last buffer index value" that "provides information that identifies a last data buffer that was last used for buffering data." Offset variable 206 may identify a location within a log buffer, but offset variable 206 does not identify a log buffer per se, nor the log buffer to which data was last written. Furthermore, Pang does not teach or suggest that the selection of log buffer 204 from among set 221 is based on offset variable 206; Pang does not teach or suggest "selecting a data buffer . . . based on said last buffer index value."

Because neither Lomet nor Pang individually teaches or suggests the features of Claim 1 discussed above, even the combination of Lomet and Pang (assuming, *arguendo*, that there is even a sufficient motivation to combined Lomet and Pang) does not teach or

suggest these features. Consequently, Claim 1 is patentable over Lomet and Pang under 35 U.S.C. § 103(a).

The Office Action rejected Claim 14 for the same reason as Claim 1. Therefore, for at least the same reasons that Claim 1 is patentable over Lomet and Pang under 35 U.S.C. § 103(a), Claim 14 is also patentable over Lomet and Pang under 35 U.S.C. § 103(a).

Claims 17 and 30 recite computer-readable medium counterparts of the methods recited in Claims 1 and 14, respectively. Therefore, for at least the same reasons that Claims 1 and 14 are patentable over Lomet and Pang under 35 U.S.C. § 103(a), Claims 17 and 30 are also patentable over Lomet and Pang under 35 U.S.C. § 103(a).

Claim 33 recites a computer system counterpart of the method recited in Claim 14. Therefore, for at least the same reasons that Claim 14 is patentable over Lomet and Pang under 35 U.S.C. § 103(a), Claim 33 is also patentable over Lomet and Pang under 35 U.S.C. § 103(a).

The pending claims not discussed so far are dependent claims that depend on an independent claim that is discussed above. Because each of the dependent claims includes the limitations of the independent claim upon which it depends, the dependent claims are patentable over the cited references for at least the reasons given for the independent claims. In addition, the dependent claims introduce additional limitations that independently render them patentable over the cited references. Due to the fundamental difference already identified, a separate discussion of those limitations is not included at this time.
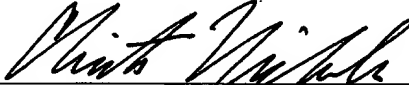
MISCELLANEOUS

Applicant believes that all issues raised in the Office Action have been addressed and that allowance of the pending claims is appropriate. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Examiner is invited to telephone the undersigned at (408) 414-1080 to discuss any issue that may advance prosecution. To the extent necessary, Applicant petitions for an extension of time under 37 C.F.R. § 1.136. The Commissioner is authorized to charge any fee that may be due in connection with this Reply to our Deposit Account No. 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

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Christian A. Nicholes
Reg. No. 50,266

1600 Willow Street
San Jose, California 95125-5106
Telephone No.: (408) 414-1080
Facsimile No.: (408) 414-1076

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

on ___September 20, 2004___   by _____
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